

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Attorney Docket № 14221US02

In the Application of:)	
)	
Mohan Kalkunte, et al.)	Electronically Filed on June 12, 2009
)	
Serial No.: 10/648,573)	
)	
Filed: August 26, 2003)	
)	
For: METHOD AND SYSTEM FOR)	
HANDLING TRAFFIC FOR SERVER)	
SYSTEMS)	
)	
Examiner: Saket K. Daftuar)	
)	
Group Art Unit: 2151)	
)	
Confirmation No.: 4096)	
)	

RENEWED PETITION PURSUANT TO 37 C.F.R. § 1.181(a)
(TO WITHDRAW HOLDING OF ABANDONMENT)

Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Senior Attorney Paul Shanowski

Dear Sir:

This paper responds to the Decision on Petition Pursuant to 37 CFR § 1.181(a), mailed on April 14, 2009 ("Decision"). This Renewed Petition and the corresponding Exhibits are timely filed within the two-month period of reply expiring on June 15, 2009.

"A petition to revive an abandoned application (discussed below) should not be confused with a petition from an examiner's holding of abandonment. Where an

applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under **37 CFR 1.181(a)** requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee.” MPEP 711.03(C).(I).

“In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (**35 U.S.C. 151**) or for failure to prosecute (**35 U.S.C. 133**).

The showing required to establish non-receipt of an Office communication must include a statement from the practitioner **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question." MPEP 711.03(c).I.A.

I, Ognyan I. Beremski ("Petitioner"), Registered Patent Attorney No. 51,458, and Attorney for Patent Owner, the Broadcom Corporation, and attorney of record for the above identified case, respectfully petition for a withdrawal of the holding of abandonment for the above-identified case, and hereby declare:

(1) Sarah Howard and Felisha Naylor are petitioner's assistants and receive all of petitioner's correspondence from the U.S Patent and Trademark Office;

(2) Upon receipt of my correspondence, Sarah Howard and/or Felisha Naylor log into the "IP Master Version 1.7.2 Docketing System" ("Docketing System"). IP Master is a commercially available and widely used docketing system. All PTO communications are routed into our docketing department where the application number, attorney docket number, mail date of the Office action and due date for the response are entered into the system along with other pertinent information. The system is backed up nightly and maintained on a regular basis. There has been no loss or corruption of data in the system to-date.

(3) According to PAIR Records, on June 6, 2008, a Notice of Non-Compliant Amendment" ("June 6, 2008 Notice") was mailed from the U.S. Patent and Trademark Office, setting a one-month shortened statutory period of reply (through July 6, 2008).

(4) The docketing system described in paragraph 2 is sufficiently reliable, and includes records with the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(5) Based on a review of records contained in the Docketing System described in paragraph 2, petitioner's docket, the file jacket for the above-identified patent application, and the application file contents, Petitioner respectfully submits that the document mentioned in paragraph 3 was not received at petitioner's office.

(6) Although no such "master docket" as described in MPEP 711.03(c)(I)(A) exists, Petitioner presents:

Exhibit A: A copy of the file jacket for the present Application (serial № 10/648,573). As seen from this Exhibit, all incoming Office Actions and outgoing responses are logged in with their respective mailing dates.

Exhibit B: A printout from the Docketing System showing patent data (including incoming Office Actions and outgoing responses) for the present Application (serial № 10/648,573).

Exhibits C – E: Copies of the "Actions Due Report" for the attorney of record for this case at the time (Hopeton S. Walker), for the periods 7/1/08-7/7/08; 8/1/08-8/7/08; and 9/1/08-9/7/08.

(7) It submitted that had the document described in Paragraph 3, been received,

(a) In Exhibit A: If the June 6, 2008 Notice was indeed received, it would have been reflected on the cover of the file jacket with a separate entry. As seen from this Exhibit, no such entry of the June 6, 2008 Notice exists, which illustrates the June 6, 2008 Notice was not received.

(b) In Exhibit B: If the June 6, 2008 Notice was indeed received, it would have been reflected in the "Actions" column in the "Other Case-Related Information"

portion of the report. As seen from page 3 of this Exhibit, there is no entry for the June 6, 2008 Notice, which illustrates the June 6, 2008 Notice was not received.

(c) In Exhibit C: There would be an entry in the “Actions Due Report” indicating that a response for the June 6, 2008 Notice was due on July 6, 2008 for the corresponding attorney docket number of the present case, 14221US02. As seen from this Exhibit, there is no entry for the June 6, 2008 Notice, which illustrates the June 6, 2008 Notice was not received.

(d) In Exhibit D: There would be an entry in the “Actions Due Report” indicating that a response with a one-month extension was due for the June 6, 2008 Notice on August 8, 2008 for the corresponding attorney docket number of the present case, 14221US02. As seen from this Exhibit, there is no entry for the June 6, 2008 Notice, which illustrates the June 6, 2008 Notice was not received.

(e) In Exhibit E: There would be an entry in the “Actions Due Report” indicating that a response with a two-month extension was due for the June 6, 2008 Notice on September 8, 2008 for the corresponding attorney docket number of the present case, 14221US02. As seen from this Exhibit, there is no entry for the June 6, 2008 Notice, which illustrates the June 6, 2008 Notice was not received.

(8) Petition respectfully submits that none of the conditions 7(a)-(e) exist.

CONCLUSION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon. Furthermore, the Commissioner is authorized to charge any fees associated with any actions requested herein to Deposit Account No. 13-0017.

June 12, 2009

/Ognyan I. Beremski/

Ognyan I. Beremski
Reg. No. 51,458
ATTORNEY FOR PATENT OWNER

McAndrews, Held & Malloy, Ltd.
500 West Madison – Suite 3400
Chicago IL 60661
Phone (312) 775-8000
FAX (312) 775-8100

(OIB)